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916/445-6414

August 19, 1986

RE: Transfers of Partnership Interests

Dear

This is in response to your letter dated June 9, 1986, in which you ask for our interpretation of the statutes pertaining to the change in ownership of real property owned by partnerships. Your question arises because you perceive a conflict between Revenue and Taxation Code Section 65.1(a) and Revenue and Taxation Code Section 64(d).

Revenue and Taxation Code Section 65.1(a) provides that except for a joint tenancy interest described in Section 62(f), when an interest in a portion of real property changes ownership, only the interest or portion transferred shall be reappraised. You ask us to explain the apparent conflict between this provision and Revenue and Taxation Code Section 64(d) which provides that whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in a partnership are transferred by any of the original co-owners in one or more transactions, there is a change in ownership of real property which was previously excluded from change in ownership under the provisions of Section 62(a)(2).

It is first important to point out that these code sections deal with different subjects. Section 65.1 pertains to interests in real property. Section 64(d) pertains to interests in legal entities.

It is important to remember when analyzing any transfer of real property involving a partnership to first determine what is being transferred: an interest in real property or an interest in the partnership. If the transaction pertains to an interest in real property, then the general rule of Section 62(i) applies: All transfers of real property to or from a

partnership are changes in ownership of any portion of the property which is transferred. The one exception to this general rule is stated in Section 62(a)(2). Section 62(a)(2) provides that if the transfer results solely in a change in the method of holding title to the real property and the proportional ownership interests of the transferors and transferees remain the same, then there is no change in ownership.

If the transfer pertains to the transfer of ownership interests in the partnership, then the general rule of 64(a) applies. Section 64(a) provides that the transfer of ownership interests in legal entities shall not be deemed to constitute a transfer of the real property of the legal entity. Two exceptions to this rule are Sections 64(c) and (d). Section 64(c) provides that when the majority ownership in the partnership has changed control, there is a change in ownership of the partnership property. Section 64(d) provides that if a transfer is previously excluded by Section 62(a)(2) because the ownership interests remained proportionately the same, when subsequent to that transfer more than 50 percent of the interests in the partnership are transferred, then all of the property which was previously excluded because of Section 62(a)(2) will be reappraised. It is important to point out that not all of the property owned by the partnership will necessarily be reappraised under Section 64(d), but only that property which was previously excluded from change in ownership pursuant to Section 62(a)(2). Formerly, Section 62(d) provided that all of the property owned by the legal entity would be reappraised in the same percentage as the transferred ownership interest in the legal entity. Section 64(d) was amended by Stats. 1982, ch. 1425, which clarified that only property previously excluded by Section 62(a)(2) is to be reappraised. Therefore, the language in Rule 462(j)(4)(B) is obsolete.

The difference in treatment between transfers of partnership interests (reappraisal of all of partnership property when only a majority of partnership interest is transferred) and transfers of real property (only that portion transferred is reappraised) arose because the Legislature was concerned that under Proposition XIII, homeowners would be more subject to the property tax than legal entities. Although legal entities can transfer property by deed as individuals can, they also have the power to move property around by the transfer of ownership interests in the entity, a means not available to individuals. For this reason, the Legislature enacted Section 64(c) which provides that when the majority ownership interest in a partnership or other legal entity changes ownership, there shall be a change in ownership of property owned by the legal entity. (See Property Tax Assessments: Implementation of

August 19, 1986

Proposition XIII; Vol. 1 (October 29, 1979), prepared by staff of the Assembly Revenue and Taxation Committee.) The Legislature enacted Section 64(d) in order to supplement Section 64(c) by providing an added means of recouping value from subsequent transfers of property to an entity which qualified originally for the Section 62(a) exclusion.

I hope this analysis is helpful to you. If you have any questions or if you wish to discuss this further, please contact me.

Very truly yours,

Michele Hicks
Tax Counsel

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